



STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

KLAMATH-TRINITY TEACHERS ASSOCIATION, CTA/NEA)	
Charging Party,)	Case No. SF-CE-1473
v.)	Administrative Appeal
KLAMATH-TRINITY JOINT UNIFIED SCHOOL DISTRICT,)	PERB Order No. Ad-238
Respondent.)	January 29, 1993
)	

Appearances: California Teachers Association, by Ramon E. Romero, Attorney, for Klamath-Trinity Teachers Association, CTA/NEA; Kronick, Moskovitz, Tiedemann & Girard by John L. Bukey, Attorney, for Klamath-Trinity Joint Unified School District.

Before Hesse, Chairperson, Carlyle and Blair, Members.

DECISION

HESSE, Chairperson: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the Klamath-Trinity Joint Unified School District (District) from the PERB appeals assistant's rejection of the statement of exceptions to the proposed decision of an administrative law judge as untimely filed. The proposed decision was served by mail on the parties, May 8, 1992.¹ Under PERB Regulation section 32300² the

¹All dates in this proceeding refer to 1992.

²PERB regulations are codified at California Code of Regulations, title 8, section 31001, et seq. Regulation section 32300 states, in pertinent part:

- a) A party may file with the Board itself an original and five copies of a statement of exceptions to a Board agent's proposed decision issued pursuant to section 32215,

exceptions were due to be filed by the District on June 2.

By letter dated June 4, the PERB appeals assistant informed the District that the exceptions were not timely filed but that the decision was appealable to the Board itself. On June 15, the District filed an appeal requesting that the late filing be excused for good cause under regulation section 32136.³

The District enclosed a declaration of Carrie Laberdie, a secretary to the leading attorney for the District. She states that on June 2, 1992, she mailed a statement of exceptions to the San Francisco PERB office in error because she habitually filed documents with that office on a regular basis and did so this time through force of habit. Secondly, she states that she mailed it by first class mail because she failed to read the PERB letter requiring that it be sent by certified mail or United States Express mail, if sent on the deadline, in order to be considered filed. Upon receiving a telephone call from the San Francisco PERB office on June 4, she hand delivered the statement

and supporting brief, within 20 days following the date of service of the decision or as provided in section 32310. The statement of exceptions and briefs shall be filed with the Board itself in the headquarters office. Service and proof of service of the statement and brief pursuant to section 32140 are required.

³Regulation section 32136 states:

A late filing may be excused in the discretion of the Board for good cause only. A late filing which has been excused becomes a timely filing under these regulations.

of exceptions to the Sacramento PERB Office on that day. The declaration is uncontradicted and the Klamath-Trinity Teachers Association, CTA/NEA (Association) received notice of the filing of the exceptions in a timely manner.

DISCUSSION

PERB has on a number of occasions excused late filings for purely clerical error where a reasonable excuse is provided and the delay caused was brief and no prejudice resulted to any party to the case (The Regents of the University of California (Davis, Los Angeles, Santa Barbara and San Diego) (1989) PERB Order No. Ad-202-H; North Orange County Regional Occupational Program (1990) PERB Decision No. 807).

In the instant case there is no reason to believe that the filing errors were due to anything but inadvertance, the delay was brief and no prejudice has been shown as a result. Accordingly, we conclude that good cause exists for excusing the late filing and the statement of exceptions will be accepted as timely filed.

ORDER

The District's statement of exceptions in Case No. SF-CE-1473 are ACCEPTED as timely filed. Pursuant to PERB Regulation section 32310, the Association is hereby afforded 20 days from service of this Decision to file a response to the District's statement of exceptions.

Member Blair joined in this Decision.

Member Carlyle's dissent begins on page 4.

Carlyle, Member, dissenting: I respectfully dissent from the majority's conclusion that the Klamath-Trinity Joint Unified School District (District) has established good cause to excuse its late filing. As set forth below, in my opinion, the majority's decision conflicts with prior Public Employment Relations Board (PERB or Board) decisions and substantially weakens the good cause standard of PERB Regulation 32136¹ in excusing the late filing of documents.

PERB regulations clearly state that in order for exceptions to be considered timely filed, the document must be received by the Board itself within 20 days² of service of the proposed decision. Further, PERB Regulation 32135 states:

All documents shall be considered "filed" when actually received by the appropriate PERB office before the close of business on

¹PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq. Regulation section 32136 states:

A late filing may be excused in the discretion of the Board for good cause only. . . .

²Regulation section 32300 states, in pertinent part:

(a) A party may file with the Board itself an original and five copies of a statement of exceptions to a Board agent's proposed decision issued pursuant to section 32215, and supporting brief, within 20 days following the date of service of the decision or as provided in section 32310. The statement of exceptions and briefs shall be filed with the Board itself in the headquarters office. Service and proof of service of the statement and brief pursuant to section 32140 are required.
(Emphasis added.)

the last date set for filing or when sent by telegraph or certified or Express United States mail postmarked not later than the last day set for filing and addressed to the proper PERB office.

The majority relies on two Board cases in which late filings were excused for purely clerical errors. In The Regents of the University of California (Davis, Los Angeles, Santa Barbara and San Diego) (1989) PERB Order No. Ad-202-H, the Board excused a late filing based on an unrefuted declaration by the University's attorney that it was the policy of his office to file documents with PERB by certified mail. The attorney instructed his secretary to mail the documents, but she inadvertently sent them by regular mail on the last day set for filing rather than by certified mail. The Board determined that good cause did exist and excused the late filing.

In the other case cited by the majority, North Orange County Regional Occupational Program (1990) PERB Decision No. 807, the Board excused a late filing that was inadvertently sent to the wrong PERB office. The Board based its decision on the declaration of the secretary who mailed the document that she routinely sent a large number of PERB filings to the Los Angeles office. The Board held that the party had attempted to file in a timely fashion and as the documents were mailed ten days prior to the PERB deadline, albeit the wrong office, good cause was established.

However, the Board has also determined instances where late filings were not excused due to clerical errors. Two of these cases are similar to the present case. In Los Angeles Community

College District (1991) PERB Decision No. 908, two problems existed with the district's late filing: 1) PERB's address had been incorrectly typed on the envelope, causing it to be misdirected; and 2) the documents had been mailed by regular first class mail from Los Angeles to Sacramento one day before the filing deadline. On appeal, the district focused on the envelope's typographical error, but failed to submit an explanation for mailing its documents by regular first class mail. The Board held that as no adequate explanation was provided, good cause did not exist to excuse the late filing.

In Sonoma County Office of Education (1992) PERB Order No. Ad-230 (Sonoma County), a party mailed its statement of exceptions and supporting brief by regular first class mail on the last day set for filing and mailed them to the PERB San Francisco Regional Office. On appeal, the party argued that it was the error of a new secretary who was responsible for mailing the documents to the wrong office. Further, it was argued that, the secretary was not aware that the statement of exceptions was required to be served on the PERB Headquarters Office. The Board concluded that although the party had provided an explanation for the misdirection of the documents, it failed to offer an adequate explanation for its failure to timely file the appeal. Therefore, the Board concluded that good cause did not exist to excuse the late filing.

This case is almost identical to the facts presented in Sonoma County. Here, the secretary misdirected the statement of exceptions and accompanying documents to the San Francisco

Regional Office. The documents were also mailed by first class mail on the last day set for filing. In an unrefuted declaration, the secretary stated that she mailed the documents to the wrong office because she regularly files documents with that office. I would concur with the majority that good cause may exist to excuse the filing in the wrong office.

However, as to the failure to mail the documents by certified or Express United States mail on the deadline date, good cause has not been established. In the secretary's declaration she states:

I failed to read the letter from the Sacramento P.E.R.B. office stating that the Statement of Exceptions must, if sent on the deadline, be sent via certified mail or United States Express Mail to be considered filed.

The consequences of a party failing to provide an adequate explanation as to why documents were not timely filed or the failure of a party to read a PERB letter outlining the procedure to be used in timely filing documents is no different. In both instances the parties failed to follow PERB regulations in filing documents. Moreover, the secretary admitted in her declaration that she was provided information from PERB explaining PERB procedures on how to file appeals but that she simply did not read it. Further, the secretary's law firm has appeared numerous times before the Board and should be well acquainted with the Board's procedures. The rules governing the filing of an appeal to a proposed decision are "neither new, unsettled, nor complex."

(Calipatria Unified School District (1990) PERB Order
No. Ad-217.)

Additionally, as to the District's argument that no prejudice resulted from the late filing in this case, the Board has held that while lack of prejudice resulting from a late filing is an important consideration in deciding whether to excuse a late filing for good cause, it is not, in and of itself, the determinative factor. (*Id.* at p. 13.)

Finally, I am concerned that the majority's ruling will now provide parties with new fodder in their appeals of late filings. Failure to read PERB correspondence should not be sufficient to constitute good cause to excuse a late filing. I would find the District has failed to demonstrate that good cause exists to excuse the late filing.